

EXHIBIT 15

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5 SERGEY LEONTIEV,

6 Plaintiff,

Case No. 16-cv-3595

7 -against-

8 ALEXANDER VARSHAVSKY,

9 Defendant.

10 - - - - -x

11 January 9, 2017

12 9:40 a.m.

13 *** CONFIDENTIAL ***

14
15 Videotaped deposition of
16 VITALIY POPOV, taken by Plaintiff,
17 pursuant to Notice, held at the offices of
18 Roschier Asianajotoimisto Oy, Keskuskatu
19 7A, Helsinki, Finland, before
20 Sharon Lengel, a Registered Professional
21 Reporter, Certified Realtime Reporter, and
22 Notary Public of the State of New York.

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24 * * *
25

A P P E A R A N C E S:

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BY: NICHOLAS C. TOMPKINS, ESQ.

COLBY A. SMITH, ESQ.

ALSO PRESENT:

DAVID ROSS ELLIOTT, Videographer

PAVEL KHOKHLACHEV, Interpreter

VICTOR POTAPOV, Check Interpreter

* * *

1 POPOV - CONFIDENTIAL

2 BY MR. KING:

3 Q. Good morning, Mr. Popov.

4 A. Good morning.

5 Q. Could you state your full name,
6 please, for the record.

7 A. Popov Vitaliy Nikolaevich.

8 Q. Where are you employed?

9 A. A company called Akita.

10 Q. How long have you been employed
11 by Akita?

12 A. Since January 2016.

13 Q. And is that when Akita was
14 created?

15 A. It was created not long before
16 that.

17 Q. Prior to January of 2016, where
18 were you employed?

19 A. I worked for a company called
20 Avilon Automobile Group.

21 Q. How long did you work for
22 Avilon?

23 A. I worked for that company since
24 May 2012 -- 2013. And before that, I had
25 been working for the company for two

1 POPOV - CONFIDENTIAL

2 years, since 2008 to 2010.

3 Q. Okay. During 2008 to 2010, what
4 was your job for Avilon?

5 A. I was the head of the legal
6 department.

7 Q. And then in 2010, where did you
8 go work?

9 A. I moved to another company. The
10 company was called -- group of
11 companies -- Russian Sea.

12 Q. And you worked there until May
13 of 2013?

14 A. Yes.

15 Q. And then you returned to work
16 for Avilon?

17 A. Yes.

18 Q. Was the company called Russian
19 Sea related in any way to Avilon?

20 A. No.

21 Q. So beginning in May of 2013,
22 what was your job at Avilon?

23 A. Head of the legal department.

24 Q. How many employees worked in the
25 legal department between 2013 and 2016?

1 POPOV - CONFIDENTIAL

2 A. The number kept changing. At
3 one time, it was 18 people. Now it is 13
4 people.

5 THE INTERPRETER: Sorry.

6 A. Twelve.

7 Q. How many of those -- how many
8 lawyers in the legal department?

9 A. Nine.

10 Q. Is the structure of the legal
11 department at Akita the same as it was at
12 Avilon immediately prior to the formation
13 of Akita?

14 A. Did you mean the legal
15 department structure?

16 Q. Yes.

17 A. No. The structure has changed.

18 Q. How has the structure changed?

19 A. So it was the purpose of the
20 management company to consolidate. So if,
21 before, we used to have a legal department
22 for -- or separate lawyers for car
23 business and separate lawyers for leasing
24 business, now they decided to put them
25 together.

1 POPOV - CONFIDENTIAL

2 Q. So when you said there's now 12
3 people, you mean 12 -- 12 people in the
4 legal department of Akita?

5 A. Yes.

6 Q. Who owns Akita?

7 A. It belongs to Alexander
8 Varshavsky and Kamo Avagumyan through
9 other legal persons.

10 Q. Through what other legal
11 persons?

12 A. Company Maxbond.

13 Q. Is there a contractual
14 relationship between Akita and Avilon
15 Automobile Group?

16 A. Yes.

17 Q. And what's the nature of that
18 contractual relationship?

19 A. It's a mixed contract with
20 elements of management and consulting.

21 Q. Do you have any ownership
22 interest in Akita?

23 A. No.

24 Q. Do you have any ownership
25 interest in Avilon?

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2 and pass it on for signature to the
3 shareholders.

4 Q. You're aware that, in December
5 of 2008, Avilon, or as it was then known,
6 New York Motors Moscow, made a loan to a
7 company called Ambika; is that correct?

8 A. Yes.

9 Q. Did you have any involvement in
10 the transaction?

11 A. Yes.

12 Q. What was your involvement?

13 A. We received a draft contract --
14 I received a draft contract from Yanna
15 Krisiuk. We possibly made some
16 amendments. I don't remember exactly.
17 And after that, our mission in this regard
18 was over.

19 Q. How did you find out that the
20 transaction was happening?

21 A. That it was happening or it had
22 happened?

23 Q. That it was happening.

24 A. First, it was Irina Monakhova
25 who phoned me, and she said that we are

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2 signing this contract, and I need to --
3 and I need to agree. I need to look at
4 it, approve it. And after that, we
5 communicated with Yanna. We were
6 exchanging some documents. And we also
7 communicated with Aleksander Vyulkova.

8 Q. Aleksandra.

9 A. Aleksandra.

10 Q. What did Ms. Monakhova tell you
11 was the transaction?

12 A. That our shareholders decided to
13 provide a loan to the shareholders of
14 Probusinessbank.

15 Q. Did she say how much your
16 shareholders had decided to provide?

17 A. I don't remember figures outside
18 of my -- outside of my responsibility.

19 Q. Did she tell you what the terms
20 of the loan were going to be?

21 A. Possibly, at the time we were
22 discussing this. I don't remember. But
23 most likely, there was a term of the loan,
24 conditions of the loan, and other
25 parameters, maybe the interest rate.

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2 Q. When she said that your
3 shareholders had decided to provide a
4 loan, who was she referring to?

5 A. At the time, we had two main
6 shareholders -- Alexander Varshavsky and
7 Igor Bakonenko.

8 Q. Was Mr. Avagumyan a shareholder
9 at the time?

10 A. In 2008, no. He was a
11 shareholder in another company. He was a
12 shareholder in European Realty.

13 Q. Okay. So when Ms. Monakhova
14 told you that your shareholders had
15 decided to provide a loan, did she mean
16 both Mr. Varshavsky and Mr. Bakonenko?

17 MR. SMITH: Objection to form.

18 A. It's difficult for me to answer
19 this question. It was ten years ago. And
20 what she meant -- and what she meant at
21 the time is not clear. But most likely,
22 yes.

23 Q. Before the loan agreement was
24 finalized, did you have any conversations
25 about the loan with Mr. Varshavsky?

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2 A. No. At that time, I practically
3 did not communicate at all with Alexander.

4 Q. Did Ms. Monakhova tell you why
5 the shareholders had decided to provide a
6 loan?

7 A. No. At least I don't remember.

8 Q. Had you ever heard of the
9 company Ambika prior to that time?

10 A. No.

11 Q. Did Ms. Monakhova tell you
12 anything about Ambika?

13 A. Well, she said that this is a
14 company that belonged to the shareholders
15 of Probusinessbank, and I can find out all
16 the details from Yanna and Aleksandra
17 Vyulkova.

18 Q. Who was Yanna?

19 A. Yanna was the head of VIP
20 department.

21 Q. For who?

22 A. She was communicating with
23 corporate clients, as far as I remember.

24 Q. Corporate clients of
25 Probusinessbank?

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2 A. At that time, yes, after that
3 Financial Group "Life" was created and
4 their signature then said Financial Group
5 "Life."

6 Q. And who was Ms. Vyulkova?

7 A. I don't know what her position
8 was. But she was handling the
9 companies -- foreign companies that
10 belonged to the shareholders of the bank.

11 Q. Had you had any dealings with
12 her prior to the loan in December of 2008?

13 A. I don't remember.

14 Q. How did you come to learn that
15 she was handling foreign companies that
16 belonged to the shareholders of the bank?

17 A. I was told by Yanna Krisiuk.
18 She introduced me. She gave me her
19 number, and she said that all the matters
20 to do with foreign companies have to go
21 through her.

22 Q. Okay. Let me show you what has
23 previously been marked as Plaintiff's
24 Exhibit 7.

25 Mr. Popov, take a moment to look

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2 at the documents that are part of
3 Exhibit 7. And I ask you if the first
4 three pages -- sorry -- first three pages
5 of that are the contract that you worked
6 on in conjunction with Ms. Krisiuk in
7 December of 2008.

8 MR. SMITH: Objection to form.

9 A. It looks like, yes.

10 Q. Do you recall who drafted the
11 initial version of the agreement?

12 A. I don't remember, but it seems
13 to me that it was Yanna who sent the
14 initial version.

15 Q. Okay. What do you recall of
16 your discussions with Yanna about the
17 contract?

18 A. I don't remember any of the
19 details at all.

20 Q. Did you have an understanding of
21 what the company called Ambika did?

22 A. No, but we understood that there
23 was some financial company that was
24 connected to the shareholders of the bank.

25 Q. Okay. And who told you that?

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2 with a document, I think.

3 MR. SMITH: Okay.

4 A. Possibly, you mean that it
5 wasn't settled, but that the liability
6 from the original loan agreement was
7 adjoined to the subsequent loan agreement.

8 Q. Yeah. And do you know why that
9 was done?

10 A. No.

11 Q. Did you have any involvement in
12 documenting that change?

13 A. I don't remember specifically.

14 Q. At the time the 2008 loan was
15 originally entered into, do you recall any
16 discussions about whether there would be
17 guarantees provided for repayment of the
18 loan?

19 A. I remember that we were
20 discussing with Yanna the actual text of
21 this guarantee, because finance people
22 needed that guarantee.

23 Q. What do you recall about those
24 discussions?

25 A. I just remember that there was

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2 some exchange of documents, and we passed
3 those documents on to the finance
4 department.

5 Q. And so is it the case that
6 Ms. Monakhova told you that the terms of
7 the transaction involved getting a
8 guarantee?

9 A. No. I do not -- no. I do not
10 remember this. It's just that, for
11 finance people, all the transactions have
12 to be secured. But I do not have -- but I
13 don't remember specific discussion about
14 the guarantee. I don't remember the fact
15 that a guarantee was a condition of the
16 transaction.

17 Q. Why do you say that the finance
18 people needed to have all the transactions
19 secured?

20 A. I didn't -- I am not a
21 specialist on this. I only know this from
22 what Yulia Semenova said to me.

23 Q. So Ms. Semenova told you this at
24 what point in time?

25 A. I don't remember specific

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2 guarantee that appears at page SL66 in
3 Exhibit 9, did you show that guarantee to
4 anyone in the financial department?

5 MR. SMITH: Objection. Lack of
6 foundation.

7 A. I am -- I'm not even sure I
8 received this guarantee directly. It
9 could have been received by the finance
10 department, and then I could have just
11 seen the text when they came with a draft
12 of the agreement.

13 Q. Did you ask Ms. Krisiuk whether
14 there would be a written guarantee
15 directly from the shareholders of the
16 bank?

17 A. No, I didn't.

18 MR. KING: I think we should
19 take a short break so that we can
20 change the tape.

21 MR. SMITH: Sure.

22 THE VIDEOGRAPHER: Thank you.
23 This is the end of Media 1, Volume I,
24 in the video deposition of Mr. Vitaliy
25 Popov off. Going off the record at

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2 of the Russian ERK?

3 A. As far as I know, Kamo
4 Avagumyan.

5 Q. Who is Svetlana Geris?

6 A. Svetlana Geris was the manager
7 of New York Motors Corporation.

8 Q. And what was New York Motors
9 Corporation? How did it fit into the
10 structure that you've just described?

11 A. In 2008, this company was the
12 only shareholders -- shareholder of New
13 York Motors Moscow.

14 Q. And how did New York Motors
15 Corporation relate, if it did, to European
16 Realty Corporation, the American entity?

17 A. They had the same shareholders.

18 Q. And that would be Mr. Varshavsky
19 and Mr. Bakonenko?

20 A. Yes.

21 Q. Did Ms. Geris have any role at
22 European Realty Corporation?

23 MR. SMITH: Either entity or --

24 MR. KING: The American entity.

25 A. I -- I don't remember exactly.

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2 company.

3 Q. Have you ever had a conversation
4 with Mr. Leontiev?

5 A. No.

6 Q. Have you ever communicated with
7 him in any way?

8 A. No.

9 Q. What was your involvement in the
10 payment by Valkera? What was your
11 involvement in that transaction?

12 A. They sent a draft of agreement,
13 and I did the review of the document. I
14 made some amendments. They were mixing up
15 the names of the companies, the amounts,
16 and they were even prepared to pay under
17 the agreement, about which we have these
18 proceedings. There were some technical
19 mistakes there also. So with Maxim
20 Shamis, we prepared the final text. Apart
21 from that, I communicated with Ekaterina
22 Malygina, because we needed to get legal
23 opinion from PwC.

24 Q. Let's take a step back.

25 You had a call with

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2 A F T E R N O O N S E S S I O N

3 2:20 p.m.

4 THE VIDEOGRAPHER: This is the
5 beginning of Media 4, Volume I, in the
6 video deposition of Vitaliy Popov.
7 We're back on the record at 2:20 p.m.,
8 as indicated on the video screen.

9 BY MR. KING:

10 Q. After Avilon received payment of
11 the \$17 million from Valkera, you
12 continued to have negotiations with
13 Mr. Shamis concerning repayment of the
14 2008 and 2011 loans; is that right?

15 A. Yes. And not only with Shamis.

16 Q. Who else?

17 A. With Zheleznyak.

18 Q. You continued to negotiate the
19 documentation concerning the repayment; is
20 that right?

21 A. Yes. We prepared drafts for the
22 following -- for the following tranches.

23 Q. Okay. And you recall that there
24 were a number of different structures that
25 were exchanged; is that right?

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2 A. Yes.

3 Q. Did you ever reach agreement on
4 the terms of payment?

5 A. My objective was to prepare
6 drafts of documents. I did not conduct
7 negotiations specifically on the schedule
8 of the payments. I needed to prepare
9 drafts of the documents for the next
10 tranche of 27 million and overall
11 framework agreement, which would include
12 the schedule of payments.

13 Q. What was the total amount to be
14 paid under the framework agreement that
15 you drafted?

16 A. I don't recall exactly.

17 Q. Did that include payments that
18 were to be made to parties other than
19 Avilon?

20 A. I said already that I don't
21 remember the figure. Figures are not my
22 specialty.

23 Q. Okay. Did it include
24 payments -- regardless of the figures, did
25 it include payments that were to be made

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2 to parties other than Aviron?

3 A. Again, it only had the overall
4 amount. It didn't have the basis for
5 payments.

6 Q. And who was payment to be made
7 to under the framework agreement that you
8 drafted?

9 A. As far as I remember, to Aviron
10 and to Avagumyan.

11 MR. KING: Let's mark this as
12 the next exhibit.

13 (Plaintiff's Exhibit 99, An
14 email, Bates AVPE0004194, was hereby
15 marked for identification, as of this
16 date.)

17 Q. Exhibit 99 is another email
18 chain, the original of which is in
19 Russian. And I want to direct your
20 attention first to the very first email on
21 the chain, meaning all the way at the
22 bottom of the chain, at the end of the
23 chain.

24 Do you see that's an email from
25 Ms. Monakhova dated October 20, 2015?

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2 Q. You didn't look into whether
3 these amounts were owed to Avilon or owed
4 to Mr. Avagumyan or owed to others?

5 A. No. This was not important.
6 What was important is the overall schedule
7 of payments.

8 Q. Why do you say what was
9 important was the overall schedule of
10 payments?

11 A. I don't understand the question.

12 Q. Why was it not important to know
13 to whom the money was owed?

14 MR. SMITH: Objection to form.

15 A. Because at this stage, we were
16 preparing a draft of the framework
17 agreement, which was establishing the
18 overall amount owed. And at a later
19 stage, there would be more specific
20 agreements that would identify which
21 amounts were owed to who.

22 Q. Who did you have a discussion
23 with about the idea that there would be
24 more specific agreements at a later date?

25 A. With everyone -- with Monakhova,

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2 million; is that correct?

3 MR. SMITH: Objection to form.

4 A. Most likely, yes. I don't
5 remember the specific amount.

6 Q. Did Mr. Leontiev and
7 Mr. Zheleznyak sign that agreement?

8 A. I am not aware of it.

9 MR. KING: Let's mark as
10 Exhibit 100 another email chain.

11 (Plaintiff's Exhibit 100, An
12 email, Bates AVPE0004204, was hereby
13 marked for identification, as of this
14 date.)

15 Q. The email on the bottom here
16 from Mr. Shamis dated November 29th says,
17 "For RIF, approximately 3 million was
18 paid. However, the promissory notes have
19 not been returned yet."

20 Do you know what that -- do you
21 know what Mr. Shamis was referring to?

22 A. No.

23 Q. Did you ask him what he was
24 referring to?

25 A. No.

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2 Q. Did you factor that into your
3 drafting of the agreements?

4 A. No.

5 Q. Do you know who Diana Karapetyan
6 is?

7 A. No.

8 MR. KING: Let's mark the next
9 exhibit.

10 (Plaintiff's Exhibit 101, An
11 agreement, Bates AVPE0006134, was
12 hereby marked for identification, as
13 of this date.)

14 Q. Exhibit 101 is a document Bates
15 numbered AVPE6134 to 36.

16 Do you recognize that as one of
17 the documents that you drafted?

18 A. No. I did not prepare this
19 document.

20 Q. Do you know if someone at Aylon
21 prepared this document?

22 A. As I said before, it is possible
23 that I asked my employees to prepare
24 drafts of documents for transactions, for
25 various options of transactions.

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2 to prepare specific agreements for each
3 transaction.

4 Q. Did Mr. Shamis or Mr. Zheleznyak
5 ever get back to you to tell you that the
6 draft framework agreement that you had
7 prepared was acceptable?

8 MR. SMITH: Objection to form.

9 A. Yes. There was a letter
10 somewhere from Shamis where he said that
11 he was happy with everything, and then he
12 passed it on somewhere.

13 Q. But did he tell you -- did he
14 get back to you to say whether the draft
15 framework agreement was acceptable to
16 Mr. Leontiev?

17 A. I don't remember specifically
18 whether it got to Leontiev.

19 Q. Who were you waiting on approval
20 from?

21 MR. SMITH: Objection to form.

22 Asked and answered.

23 A. I was waiting for Maxim Shamis
24 for the final confirmation that everyone
25 was happy with everything.

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2 Q. Who is "everyone," Mr. Popov?

3 MR. SMITH: Same objection.

4 A. I mean all the lawyers who were
5 involved.

6 Q. The lawyers for who?

7 A. Of Zheleznyak and Leontiev.

8 Q. And did Mr. Shamis ever get back
9 to you to tell you that everyone was happy
10 with the framework agreement that you had
11 drafted?

12 A. He was saying that there are no
13 disagreements, in principle, but they are
14 asking for additional documents.

15 Q. What documents did he tell you
16 they were asking for?

17 A. So it was the same every time --
18 loan agreements, additional agreements,
19 promissory notes.

20 MR. KING: Mark this as the next
21 exhibit, please.

22 (Plaintiff's Exhibit 102, A
23 surety agreement, Bates AVPE0006126,
24 was hereby marked for identification,
25 as of this date.)

1 POPOV - CONFIDENTIAL

2 Q. Do you recognize Exhibit 102,
3 Mr. Popov?

4 A. Yes. It is likely that it was
5 also prepared by my staff.

6 Q. And did you send it to anyone?

7 A. I don't remember.

8 Q. Did anyone draft a surety
9 agreement with Mr. Leontiev's name on it?

10 A. Most likely, yes.

11 Q. And who drafted that?

12 A. Also Galina Lipina.

13 Q. And what obligations did -- were
14 included in the surety agreement with
15 Mr. Leontiev's name on it?

16 MR. SMITH: Objection to form.

17 A. This doesn't matter. All of
18 this was included just as an initial
19 draft.

20 Q. In other words, it had never
21 been agreed to by Mr. Leontiev?

22 MR. SMITH: Objection to form.

23 A. What was -- what had never been
24 agreed by Mr. Leontiev?

25 Q. Did Mr. Leontiev ever agree to

1 POPOV - CONFIDENTIAL

2 sign a surety agreement with his name on
3 it?

4 MR. SMITH: Objection to form.
5 Lack of foundation.

6 A. As far as I'm aware, there is no
7 such written document.

8 Q. Did there come a time in
9 December of 2015 when you told
10 Mr. Zheleznyak that Aviron needed an
11 immediate payment of about \$11.8 million?

12 A. Yes, I did write a letter like
13 that.

14 Q. What was the reason that Aviron
15 needed an immediate payment of
16 \$11.8 million?

17 A. Because it was the end of the
18 year, and there was a date for maturity of
19 some loan agreement, and we urgently
20 needed that money.

21 Q. Did you get the money?

22 A. No.

23 Q. How did you deal with your loan
24 agreement?

25 A. Maybe we borrowed money from

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2 you didn't want an agreement to exist
3 until it was fully signed?

4 A. The disclaimer was there because
5 we did not know who the assignee would be,
6 and we did not want to have a party that
7 we did not know.

8 Q. Meaning that the agreement was
9 not finalized yet; is that right?

10 A. No doubt this was just a draft.

11 MR. KING: Let's mark that.

12 (Plaintiff's Exhibit 108, An
13 email, Bates AVPE0006232, was hereby
14 marked for identification, as of this
15 date.)

16 Q. Let me know if you recognize
17 this email chain, Mr. Popov.

18 A. Yes.

19 Q. Okay. Could you turn to
20 page 6236. And I want to ask you about
21 Ms. Semenova's email.

22 Did you have an understanding of
23 what she meant when she said, "Perhaps
24 it's possible to cement the Ambika loan
25 for 27 million, and if the money arrives,

CERTIFICATION

I, SHARON LENGEL, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 17th day of January,
2017.



SHARON LENGEL, RPR, CRR

* * *